

**Ernest F. Koschineg (Pro Hac Vice)  
Jill H. Fertel (Pro Hac Vice)  
CIPRIANI & WERNER PC  
450 Sentry Parkway - Suite 200  
Blue Bell, PA 19422  
Telephone: (610) 567-0700  
[ekoschineg@c-wlaw.com](mailto:ekoschineg@c-wlaw.com)  
[jfertel@c-wlaw.com](mailto:jfertel@c-wlaw.com)**

**Roger G. Perkins, Esq. (S.B. 86617)  
Clark Hill LLP  
One America Plaza  
600 West Broadway, Ste. 500  
San Diego, CA 92101  
Telephone: (619) 819-2432  
[rperkins@clarkhill.com](mailto:rperkins@clarkhill.com)**

**Attorneys for Defendant,  
Nonstop Administration and Insurance Services, Inc.**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JOHN PRUTSMAN, AMIRA MARTZ, SIMCHA RINGEL, NAIOMI MARDEN, ALANA BALAGOT, CORRINE WARREN, SUNNY LAI, and DAVID KLEIN, individually and on behalf of all others similarly situated,	:	Case No. 3:23-cv-01131-VC
Plaintiffs,	:	<u>CLASS ACTION</u>
vs.	:	<b>THIRD-PARTY COMPLAINT</b>
NONSTOP ADMINISTRATION AND INSURANCE SERVICES, INC., inclusive,	:	
Defendant.	:	
vs.	:	
JOHN DOE : and CONOR BRIAN FITZPATRICK, a/k/a “Pompompurin”	:	

## Third-Party Defendants :

**DEFENDANT NONSTOP ADMINISTRATION AND INSURANCE SERVICES, INC.'S  
THIRD-PARTY COMPLAINT AGAINST JOHN DOE AND CONOR BRIAN FITZPATRICK**

Nonstop Administration and Insurance Services, Inc. (hereinafter “Nonstop”) hereby brings its Third-Party Complaint against Third-Party Defendants John Doe and Conor Brian Fitzpatrick a/k/a “Pompompurin” (collectively hereinafter “Third-Party Defendants”) and in support thereof alleges as follows:

## **INTRODUCTION**

1. On December 22, 2022, Nonstop was the victim of a crime. Using sophisticated, criminal hacking techniques, John Doe<sup>1</sup> illegally accessed Nonstop's information systems for approximately three hours.

2. On May 25, 2023, Plaintiffs John Prutsman, Amira Martz, Simcha Ringel, Naomi Marden, Alana Balagot, Corrine Warren, Sunny Lai, and David Klein (collectively hereinafter “Plaintiffs”) filed a Consolidated Amended Complaint (“CAC”) against Nonstop, purportedly seeking to hold Nonstop liable for that data breach, allegedly causing injury to Plaintiffs and members of a similarly impacted proposed Class.<sup>2</sup>

3. On or about January 19, 2023, an anonymous blogger operating under the name “Dissent” first disclosed that data purportedly stolen during the Nonstop data breach had been posted to a BreachForums- identified by the Federal Bureau of Investigation (“FBI”) as “one of the world’s largest hacker forums[.]”<sup>3</sup> BreachForums operated “as a marketplace for cybercriminals to buy, sell, and trade hacked or stolen contraband”<sup>4</sup>

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<sup>1</sup> John Doe's online username and known email accounts are known to Nonstop.

<sup>2</sup> See CAC, [Doc. No. 38] at ¶ 2.

<sup>3</sup> <https://www.justice.gov/opa/pr/justice-department-announces-arrest-founder-one-world-s-largest-hacker-forums-and-disruption> (last accessed November 16, 2023).

4 *Ld*

1       4. In the CAC, Plaintiffs make specific reference to this blog post and its assertion that  
 2 “45,532 lines of data were posed online as a sample of the breach by cybercriminals.”<sup>5</sup> Upon information  
 3 and belief, the “cybercriminal” is John Doe, operating under his online pseudonym. The source of the  
 4 breach was an online marketplace known as BreachForums, which, at all times material to the CAC was  
 5 operated by Conor Brian Fitzpatrick.

6       5. John Doe and Conor Brian Fitzpatrick victimized Nonstop, causing business interruption,  
 7 costs related to investigating and responding to the breach, and costs that have been incurred and will  
 8 continue to be incurred in defense of this litigation.

9       6. Moreover, to the extent that Plaintiffs have experienced any damages or harms as a result  
 10 of the data breach, these harms were the result of the intentional conduct of John Doe and Conor Brian  
 11 Fitzpatrick.

12       7. John Doe and Conor Brian Fitzpatrick, by means of their intentional, wanton, and reckless  
 13 conduct, are solely responsible for all injuries experienced as a result of the subject data breach. Nonstop  
 14 seeks to assign liability to whom it belongs- the criminal actors who perpetrated this breach.

### **JURISDICTION**

16       8. The Court has jurisdiction over the parties and subject matter of this action pursuant to 28  
 17 U.S.C. § 1331 (federal question jurisdiction).

18       9. This Court has diversity jurisdiction over this action under the Class Action Fairness Act  
 19 (CAFA), 28 U.S.C. § 1332 (d) because the Plaintiffs assert a class action against Nonstop, involving more  
 20 than 100 class members, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs,  
 21 and Plaintiffs and members of the Class are citizens of states that differ from Nonstop.

### **VENUE**

23       10. Venue is proper in the Northern District of California, pursuant to 28 U.S.C. § 1391 (b).

### **DIVISIONAL ASSIGNMENT**

25       11. Because the CAC, and this Third-Party Complaint against Third-Party Defendants are  
 26 related, assignment to the San Francisco Division of this Court is proper under Civil L.R. 3-2 (c) and (d).

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 28       <sup>5</sup> CAC at ¶ 61.

1                   **THIRD-PARTY DEFENDANTS**

2                 12.   Conor Brian Fitzpatrick is an adult individual and, upon information and belief, a resident  
 3 of Peekskill, New York.

4                 13.   John Doe is an individual whose name is unknown as of this date. Nonstop has a good faith  
 5 belief that it may be able to identify the true identity of John Doe during the course of discovery.

6                   ***The Evolution of BreachForums***

7                 14.   BreachForums, also known as “Breached,” emerged to replace “RaidForums,” a prominent  
 8 hacker forum used for trading and selling stolen databases. RaidForums was dismantled after a joint  
 9 operation of U.S. Law Enforcement and Europol in January of 2022.<sup>6</sup>

10                15.   Beginning in February of 2022, Third-Party Defendant Conor Brian Fitzpatrick  
 11 (hereinafter “Fitzpatrick”) also known as “Pompoppurin” operated BreachForums- an illegal marketplace  
 12 for the purposes of selling, purchasing, and soliciting illicit materials such as cybercrime tools, breached  
 13 databases, and other criminal services.<sup>7</sup>

14                16.   On or about March 16, 2022, Fitzpatrick, posting as Pompoppurin, announced the  
 15 following:

16                   Hello, Welcome to BreachForums! I’ve created this forum as an alternative to RaidForums  
 17 since it was seized. We are not affiliated with RaidForums in any capacity. If you used  
 18 RaidForums you most likely remember me, I was one of the more active users on there.”<sup>8</sup>

19                Fitzpatrick further informed users that he had created a unique payment system and an official content  
 20 delivery network (“CDN”) for efficient download of databases and would honor “rank” or status conferred  
 21 on RaidForums users.

22                17.   By taking these steps, Fitzpatrick engaged in a targeted effort to recruit former RaidForum  
 23 users and establish himself as the heir apparent to a now defunct criminal network.

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25                <sup>6</sup> <https://www.bleepingcomputer.com/news/security/raidforums-hacking-forum-seized-by-police-owner-arrested/> (last accessed November 16, 2023).

26                <sup>7</sup> See “Statement of Facts – *United States of America v. Conor Brian Fitzpatrick*, 1:23-cr-00119-TSE”  
 27 attached hereto as Exhibit A at ¶¶ 1-2, 6.

28                <sup>8</sup> <https://web.archive.org/web/20221218104739/https://breached.vc/Thread-Welcome-FAQ-Thread> (last accessed November 16, 2023).

1       18. Fitzpatrick's purpose in creating and operating BreachForums was to conspire with other  
 2 criminal actors as well to commit, aid, and abet in offenses including unauthorized use, sale, and  
 3 trafficking of PII such as payment card data, bank routing and account numbers, Social Security numbers,  
 4 and login credentials.<sup>9</sup>

5       19. BreachForums operated as a sophisticated criminal marketplace; as its administrator,  
 6 Fitzpatrick registered numerous domain names, registering them in a manner designed to protect him from  
 7 identification.<sup>10</sup> Fitzpatrick created a system of rules identifying prohibited conduct, hired and  
 8 compensated a staff of agents to operate and administer BreachForums, and created revenue for himself  
 9 and his co-conspirators.<sup>11</sup>

10      20. From March of 2022 – 2023, Fitzpatrick operated an illicit marketplace which allowed its  
 11 members to solicit, sell, trade, and purchase stolen data, tools for committing cybercrimes, breached  
 12 databases, and services designed to allow members to perform similar attacks on new victims.<sup>12</sup>

13      21. BreachForums included an “Official” section where users could find stolen databases  
 14 available for sale using the BreachForums CDN- a system reliant on “credits” which were available for  
 15 purchase from the forum or in earned in exchange for contributing content.<sup>13</sup>

16      22. Any members seeking to post a database for sale through BreachForums CDN was required  
 17 to contact Fitzpatrick directly to seek his personal approval of all databases uploaded for sale.<sup>14</sup>

18      23. Fitzpatrick further empowered and encouraged further criminal activity by allowing its  
 19 members to post solicitations for the sale of stolen data and creating direct messaging systems to allow  
 20 members to engage in private communications regarding criminal acts.<sup>15</sup>

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23      <sup>9</sup> Exhibit A at ¶ 1.

24      <sup>10</sup> See *Id.* at ¶ 18.

25      <sup>11</sup> See *Id.*

26      <sup>12</sup> See Exhibit A at ¶ 7.

27      <sup>13</sup> *Id.* at ¶ 14.

28      <sup>14</sup> *Id.*

<sup>15</sup> See *Id.* at ¶ 8.

1       24. In addition to its marketplace, BreachForums offered additional services including  
 2 sections where users could post “stolen or hacked data and discussed tools and techniques for hacking and  
 3 exploiting that information[.]”<sup>16</sup>

4       25. Fitzpatrick further offered a “middleman” service, acting as an intermediary between  
 5 BreachForums’ members and potential buyers.<sup>17</sup> This service enabled purchasers and sellers to verify  
 6 authenticity of both stolen data and payment mechanisms *through* Fitzpatrick.<sup>18</sup> Fitzpatrick’s process  
 7 required members to inform him of whatever product they sought to sell or trade.<sup>19</sup>

8       26. By March 7, 2023, BreachForums boasted the availability of 888 datasets originating from  
 9 a variety of government agencies, organizations, and domestic and foreign companies, consisting of an  
 10 estimated 14 billion individual records.<sup>20</sup>

11 ***The Arrest of Conor Brian Fitzpatrick***

12       27. In March of 2023, the FBI announced that it had arrested Fitzpatrick and dismantled  
 13 BreachForums.<sup>21</sup> At the time of Fitzpatrick’s arrest, BreachForums had approximately 333,412 members  
 14 and was believed to be the largest English language breach forum of its kind.<sup>22</sup>

15       28. At the time of his arrest, Fitzpatrick confessed that he, under the name Pompompurin, was  
 16 the operator of BreachForums. On July 13, 2023, Fitzpatrick pleaded guilty to one count of conspiracy to  
 17 commit access device fraud- 18 U.S.C. 1029(b)( and 3559(g)(1); solicitation for the purposes of offering  
 18 access devices- 18 U.S.C. 1029(a)(6), and possession of child pornography – 18 U.S.C. 2252(a)(4)(B) and  
 19 (b)(2) and agreed to make restitution to each of his victims in an amount no less than \$3,000 and forfeit  
 20 \$698,714.<sup>23</sup>

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21       <sup>16</sup> *Id.* at ¶ 12.

22       <sup>17</sup> *See Id.* at ¶ 13.

23       <sup>18</sup> *See Id.*

24       <sup>19</sup> *See Id.*

25       <sup>20</sup> *See Id.* at ¶ 15.

26       <sup>21</sup> <https://www.justice.gov/opa/pr/justice-department-announces-arrest-founder-one-world-s-largest-hacker-forums-and-disruption> (last accessed November 16, 2023).

27       <sup>22</sup> *See Exhibit A at ¶ 16.*

28       <sup>23</sup> *See Plea Agreement- United States of America v. Conor Brian Fitzpatrick*, 1:23-cr-00119-TSE,  
 attached hereto as Exhibit B.

1       29. After Fitzpatrick's arrest, BreachForums was shuttered, but has reemerged in a smaller  
 2 form at its original website address.<sup>24</sup>

3       30. Among the smaller pool of active members on the new BreachForums is John Doe. John  
 4 Doe maintains VIP status and a reputation score of 72. Fellow users commented that John Doe posts "great  
 5 stuff" and "great leaks ++".<sup>25</sup>

6 ***John Doe***

7       31. Upon information and belief, John Doe was a member of and contributor to BreachForums  
 8 prior to December 22, 2022.

9       32. On December 22, 2022, John Doe unlawfully entered Nonstop's information systems  
 10 without consent in order to obtain information from a protected computer.

11       33. John Doe contacted Nonstop through an email account hosted by @proton.me. The email  
 12 would not accept responses. John Doe did not offer any meaningful opportunity to negotiate, nor did he  
 13 demand any sort of financial payment coupled with a threat of disclosure. Instead, John Doe  
 14 communicated with the occasional taunt, providing no meaningful opportunity to respond.

15       34. In January of 2023, John Doe, using his known pseudonym, posted data and source code  
 16 purportedly taken from Nonstop during the breach- this information included names, dates of birth, postal  
 17 addresses, email addresses, and Social Security numbers; some records also included cellphone numbers,  
 18 employee status, job title, and annual salary.<sup>26</sup> John Doe also posted source code- a collection of plain text  
 19 programming language, from Nonstop's information system.<sup>27</sup>

20       35. The entire dataset posted by John Doe was available for purchase for BreachForum credits  
 21 valued at approximately \$20.

22       36. Upon information and belief, like all datasets made available for sale on BreachForums,  
 23 the data posted by John Doe was personally vetted and approved for sale by Fitzpatrick.

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25       <sup>24</sup> <https://cybernews.com/security/breachforums-back-online/> (last accessed November 16, 2023).

26       <sup>25</sup> *Id.*

27       <sup>26</sup> <https://www.databreaches.net/nonstop-health-data-and-source-code-appear-to-have-been-leaked-on-hacking-forum/> (last accessed November 16, 2023).

28       <sup>27</sup> *Id.*

37. To the extent that the dataset was purchased by unknown persons, those illicit proceeds were to the benefit of Fitzpatrick and John Doe.

38. In contrast, Nonstop has suffered significant financial damages as a result of the actions of Fitzpatrick and John Doe.

39. In its Costs of a Data Breach Report, IBM reported that the global average cost of a data breach to a business entity in 2023 was 4.5 million dollars, a 15% increase since 2020.<sup>28</sup> The average costs incurred by small businesses- those with fewer than 500 employees, is \$3.31 million.<sup>29</sup>

40. Nonstop has incurred costs including but not limited to forensic investigation, breach remediation, breach response and notification, and regulatory compliance. Moreover, Nonstop now bears the cost of litigation in response to the breach. These costs are ongoing and are the direct result of the intentional conduct of Fitzpatrick and John Doe. These costs should and must be borne solely by Fitzpatrick and John Doe.

**COUNT I**  
**COMPUTER FRAUD AND ABUSE ACT**  
**(Against John Doe and Fitzpatrick)**

41. Nonstop hereby incorporates the preceding paragraphs as though fully set forth at length herein.

42. John Doe intentionally accessed a protected computer belonging to Nonstop with the intent to defraud and for furthering fraudulent activity to obtain something of value.

43. Fitzpatrick aided and abetted John Doe in these efforts by:

- a. Creating BreachForums with the specific intent of creating a marketplace to promote and solicit the theft of unauthorized access devices;
  - b. Falsely registering domain names to provide anonymity for this endeavor;
  - c. Providing a forum for dissemination of tools for committing cybercrime and other services designed to facilitate cybercrime;
  - d. Enabling its members to solicit criminal activity such as data breaches; and
  - e. Creating a CDN to allow for purchase and transfer of stolen data sets.

<sup>28</sup> <https://www.ibm.com/reports/data-breach> (last accessed November 15, 2023).

<sup>29</sup> <https://www.business.com/articles/smb-budget-for-cybersecurity/> (last accessed November 16, 2023).

44. Fitzpatrick further facilitated and encouraged this specific intrusion by personally reviewing the dataset stolen by John Doe from Nonstop and approving it for sale on BreachForums.

45. Nonstop's information systems are used in interstate commerce, to wit, for the provision of services to employment groups among the several states. Nonstop's information systems therefore constitute a "protected computer" as defined by the Computer Fraud and Abuse Act ("CFAA").

46. Neither Fitzpatrick nor John Doe had authorization to access Nonstop's protected computer system.

47. During the course of John Doe's unlawful, unauthorized, and intentional access, John Doe and Fitzpatrick obtained protected information from Nonstop's system.

48. The information unlawfully obtained by John Doe and Fitzpatrick was taken from a protected computer involved in interstate commerce. Moreover, upon information and belief, the data taken from Nonstop's system was transported interstate by John Doe and Fitzpatrick.

49. As a result of this unlawful conduct by John Doe and Fitzpatrick, Nonstop has suffered financial losses including but not limited to, forensic investigation, breach remediation, breach response and notification, and regulatory compliance, in an amount to be proven at trial in excess of \$5,000.

50. Further, to the extent that Plaintiffs are able to establish any damages experienced as a result of the subject data breach, these damages are solely the result of the unlawful conduct of John Doe and Fitzpatrick.

**COUNT II**  
**INTRUSION UPON SECLUSION**  
**(Against John Doe and Conor Brian Fitzpatrick)**

51. Nonstop hereby incorporates the preceding paragraphs by reference as though fully set forth at length herein.

52. The data contained within Nonstop's information systems was not publicly available and was maintained privately and secluded from public view through Nonstop's security procedures and controls.

53. Nonstop's security procedure, policies, and controls were reasonable, appropriate, and in accordance with state and federal regulations and applicable industry standards.

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1       54. John Doe intentionally and unlawfully intruded on Nonstop's seclusion by forcefully  
 2 entering its computer systems without authorization to do so.

3       55. Fitzpatrick aided and abetted John Doe in these efforts by:

- 4           a. Creating BreachForums with the specific intent of creating a marketplace to promote and  
 5           solicit the theft of unauthorized access devices;
- 6           b. Falsely registering domain names to provide anonymity for this endeavor;
- 7           c. Providing a forum for dissemination of tools for committing cybercrime and other services  
 8           designed to facilitate cybercrime;
- 9           d. Enabling its members to solicit criminal activity such as data breaches; and
- 10          e. Creating a CDN to allow for purchase and transfer of stolen data sets.

11       56. Fitzpatrick further facilitated and encouraged this specific intrusion by personally  
 12 reviewing the dataset stolen by John Doe from Nonstop and approving it for sale on BreachForums.

13       57. The intrusion resulted in the theft of source code and sensitive personal information taken  
 14 from Nonstop's information systems.

15       58. The intrusion further resulted in the sale of source code and sensitive personal information  
 16 taken from Nonstop's information systems.

17       59. John Doe and Fitzpatrick's intrusion upon Nonstop's secluded and private information  
 18 system is highly offensive to a reasonable person, as evidence by the criminal investigation of such  
 19 conduct by the United States Government.

20       60. John Doe and Fitzpatrick's intrusion upon Nonstop's secluded and private information  
 21 system caused Nonstop anguish and suffering in the form of financial losses including but not limited to,  
 22 forensic investigation, breach remediation, breach response and notification, and regulatory compliance,  
 23 in an amount to be proven at trial.

24       61. Nonstop experienced further anguish by virtue of being subjected to litigation as a result  
 25 of John Doe and Fitzpatrick's intentional conduct.

26       62. Further, to the extent that Plaintiffs are able to establish any damages experienced as a  
 27 result of the subject data breach, these damages are solely the result of the unlawful conduct of John Doe  
 28 and Fitzpatrick.

**COUNT III**  
**PUBLIC DISCLOSURE OF PRIVATE FACTS**  
**(Against John Doe and Conor Brian Fitzpatrick)**

63. Nonstop hereby incorporates the preceding paragraphs by reference as though fully set forth at length herein.

64. In January of 2023, John Doe and Fitzpatrick publicly disclosed data and source code purportedly taken from Nonstop during the breach- this information included names, dates of birth, postal addresses, email addresses, and Social Security numbers; some records also included cellphone numbers, employee status, job title, and annual salary.<sup>30</sup> John Doe and Fitzpatrick also posted source code- a collection of plain text programming language, from Nonstop’s information system.<sup>31</sup>

65. This information was posted by John Doe after review and express approval by Fitzpatrick.

66. The source code stole from Nonstop constituted private facts, not publicly available.

67. Further, the sensitive personal information taken from Nonstop's information systems—including names, dates of birth, postal addresses, email addresses, Social Security numbers, cellphone numbers, employee status, job title and annual salary, were private facts not publicly available to others.

68. The disclosure of pilfered information by Fitzpatrick and John Doe is conduct that is offensive and objectionable to a reasonable person, as evidenced by the criminal investigation initiated by the FBI and the litigation initiated by Plaintiffs.

69. Source code and sensitive personal information – such as that unlawfully disclosed by John Doe and Fitzpatrick, are not legitimate matters of public concern.

70. As a result of this unlawful conduct by John Doe and Fitzpatrick, Nonstop has suffered financial losses including but not limited to, forensic investigation, breach remediation, breach response and notification, and regulatory compliance, in an amount to be proven at trial in excess of \$5,000.

71. Further, to the extent that Plaintiffs are able to establish any damages experienced as a result of the subject data breach, these damages are solely the result of the unlawful conduct of John Doe and Fitzpatrick.

<sup>30</sup> <https://www.databreaches.net/nonstop-health-data-and-source-code-appear-to-have-been-leaked-on-hacking-forum/> (last accessed November 16, 2023).

31 *Id*

1       72.     **PRAAYER FOR RELIEF:** Nonstop Administration and Insurance Services, Inc., demands  
2 and entry of judgment in its favor and against Third-Party Defendants John Doe and Conor Brian  
3 Fitzpatrick a/k/a Pompompurin including:

- 4              a. Damages, including compensatory damages, consequential damages, and punitive  
5              damages in an amount to be proved at trial;
- 6              b. Injunctive relief, including but not limited to injunctive and other equitable relief and an  
7              Order:
- 8                  i. Prohibiting Third-Party Defendants from accessing or disseminating information  
9                  purportedly taken from Nonstop during the subject data breach;
- 10               ii. Declaring that Third-Party Defendants are liable for the subject data breach and any  
11              damages arising therefrom;
- 12               iii. Requiring the destruction of any data taken by Third-Party Defendants during the  
13              subject breach;
- 14               iv. Requiring Third-Party Defendants to identify any persons or entities to which the  
15              subject data was provided or made available; and,
- 16               v. Requiring Third-Party Defendants to indemnify Nonstop for all costs and damages  
17              incurred as a result of the subject data breach.
- 18              c. Reasonable costs and attorneys' fees and all litigation expenses allowed by law; and,
- 19              d. Pre and post judgment interest.

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2 **WHEREFORE**, Defendant Nonstop Administration and Insurance Services, Inc. demands entry of  
3 judgment in its favor and against Third-Party Defendants John Doe and Conor Brian Fitzpatrick together  
4 with costs and attorneys' fees and any and all relief deemed proper by this Honorable Court.

5 Dated: November 20, 2023

CLARK HILL LLP

6  
7 /s/Roger G. Perkins  
8 Roger G. Perkins  
9 Clark Hill LLP  
10 600 West Broadway, Suite 600  
San Diego, CA 92101  
Phone: 619-819-2432  
[rperkins@clarkhill.com](mailto:rperkins@clarkhill.com)

11 Jill H. Fertel (*pro hac vice*)  
12 Ernie F. Koschineg (*pro hac vice*)  
13 Antima Chakraborty(*pro hac vice forthcoming*)  
450 Sentry Parkway  
14 Suite 200  
Blue Bell, PA 19422  
Phone: 610-567-0700  
[jfertel@c-wlaw.com](mailto:jfertel@c-wlaw.com)  
[ekoschineg@c-wlaw.com](mailto:ekoschineg@c-wlaw.com)  
[achakraborty@c-wlaw.com](mailto:achakraborty@c-wlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2023, I electronically filed *Third-Party Complaint* with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served today on all counsel of record in this case via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Cassandra Delery  
Cassandra Delery